

**Released by SAICA: 9 September 2012**

**Update on the current status of the Legal Opinion on Section 90(2) and Regulation 29 of the Companies Act**

The release of the Companies Act, 2008 resulted in different interpretations of Section 90(2) and Regulation 29. The SAICA and IRBA Boards' jointly agreed to consult Senior Counsel for a written opinion.

The opinion received from Senior Counsel is as follows:

The request dealt with the following two issues:

**Issue 1:**

Section 90(2) specifies who can be appointed as the auditor of the company and who is prohibited from being appointed. There is uncertainty as to whether the prohibitions are applicable to the firm appointed as the auditor or the individual appointed as the auditor.

The opinion confirms that in terms of section 90(2), where a person/firm is appointed to conduct a statutory audit then the person/firm cannot also perform *the duties of accountant or bookkeeper, or related secretarial work, for the company;*

**Issue 2:**

Regulation 29(4)(a) of the Companies Act Regulations 2011 states that for companies with a public interest score of 100-349 an independent review must be carried out either by registered auditors or by members in good standing with a professional body accredited in terms of section 33 of the Auditing Profession Act. There is uncertainty as to whether this section would effectively permit all SAICA members or only those SAICA members in public practice who have qualified through the IRBA programme.

The opinion confirms that in terms of Regulation 29(4), an independent review may be carried out by a registered auditor or a member in good standing [which means the member's fees are paid and there are no disciplinary proceedings pending against the member] of a professional body that has been accredited in terms of section 33 of the Auditing Profession Act. SAICA is a professional body so accredited, and "a member" in good standing of SAICA (ie all CAs(SA)) is thus entitled to perform an independent review, whether or not such member is in public practice or a registered auditor.

The IRBA sent out a communication on 17 May 2012 where they have stated that the monitoring of compliance with section 90(2) will be extended for a further six months from 1 May 2012 to 31 October 2012. Accordingly, registered auditors should continue to follow current practice as prescribed by the IRBA Code of Professional Conduct (the Code) in respect of the provision of audit and non – audit services. Consequently, until that date, the IRBA does not intend to prosecute registered auditors as long as they comply with the Code.

SAICA in consultation with the IRBA will be meeting with the CIPC on 19 September 2012 to engage on the practical implementation of section 90(2). We will keep members informed of decisions taken during this meeting.

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Senior Executive: Standards